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February 11, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.; Room 222
Washington, DC 20554

Re: Aliant Communications Co.
Petition for Temporary Waiver of Section 20.20 of the Commission's Rules

Dear Ms. Salas:

On behalf of Aliant Communications Co., transmitted herewith are an original and four (4) copies of a Petition for Temporary Waiver of Section 20.20 of the Commission's Rules to Establish Competitive Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket 96-162.

If you have any questions with respect to this matter, please do not hesitate to call.

Very truly yours,



Jeanne W. Stockman

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
ALIAN T COMMUNICATIONS CO.) WT Docket No. 96-162
)
Request for Temporary Waiver of the)
Commission's Rules to Establish)
Competitive Service Safeguards for)
Local Exchange Carrier Provision of)
Commercial Mobile Radio Services)

To: The Commission

PETITION FOR TEMPORARY WAIVER

Aliant Communications Co. ("Aliant"), by its attorneys and pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, hereby requests a temporary waiver of the requirement that incumbent local exchange carriers establish a separate affiliate for the provision of in-region commercial mobile radio services ("CMRS"). This requirement was adopted in the Commission's Report and Order in the captioned proceeding¹ and will become effective on February 11, 1998. Specifically, Aliant requests a temporary waiver of the separate CMRS affiliate requirement until sixty (60) days after two pending Commission reconsideration proceedings become final: the reconsideration of the instant Report and Order; and the reconsideration of the Accounting and Audit Division's ("AAD") denial of Aliant's request for waiver of the Commission's affiliate transaction rule, Section 32.27(c). As described below, requiring Aliant to establish a separate CMRS affiliate

¹In the Matter of Amendment to the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket 96-162, FCC No. 97-352, Report and Order, rel.Oct. 3, 1997 ("Report and Order").

prior to resolution of these two reconsideration proceedings would be unduly economically burdensome to Aliant. In support of Aliant's instant temporary waiver request, the following is respectfully shown:

BACKGROUND

Aliant is the wireline local exchange carrier in the greater Lincoln, Nebraska area, serving customers in 22 of the 93 counties in southeastern Nebraska. Aliant is also the licensee of the wireline cellular authorization for the Lincoln, Nebraska MSA, Market No. 172(B1), and of several paging authorizations located in the state of Nebraska. In the interest of consolidating its CMRS holdings in a dedicated CMRS affiliate, on November 18, 1996, Aliant filed applications for Commission consent to the pro forma assignment of these CMRS licenses to its affiliate, Aliant Cellular Inc.² On July 1, 1996, Aliant also filed for a waiver of the accounting procedures under Section 32.27(c) of the Commission's Rules ("Accounting Waiver") to allow the proposed transaction to be recorded at net book value, rather than at fair market value as required by the Commission's affiliate transaction rules. The Accounting Waiver was necessary to avoid triggering substantial tax liabilities for a spin-off transaction that should be tax-neutral.

During the pendency of the Accounting Waiver, on October 3, 1997, the Commission adopted the above-captioned Report and Order which requires Aliant to transfer its CMRS holdings to a dedicated CMRS affiliate, precisely as Aliant proposed in its pro forma assignment applications

² See FCC File Nos.00884-CL-AL-97; and 20682-CD-AL-97. Aliant has requested extensions of time to consummate these assignments while the Accounting Waiver regarding the valuation of these proposed transactions remained pending before the Commission. Aliant's latest extension of time to consummate these assignments expires on April 15, 1998.

and Accounting Waiver. By Order dated December 24, 1997,³ however, the Accounting and Audit Division ("AAD") denied Aliant's Accounting Waiver and required Aliant to record the proposed pro forma assignment at fair market value rather than net book value, as requested by Aliant. The AAD's decision to require fair market valuation subjects Aliant to substantial liability in the form of tax-deferred gains. On January 2, 1998, Aliant filed a Petition for Reconsideration of the Report and Order highlighting the adverse economic impact of requiring mid-sized LECs to establish separate CMRS affiliates, and the need for flexible accounting treatment to minimize this adverse impact. On January 23, 1998, Aliant filed a Petition for Reconsideration of the Accounting Waiver Order. Both of these proceedings remain pending as of this date. Comments have been filed in support of Aliant's Petition for Reconsideration of the Accounting Waiver.⁴ While the merits of the two Aliant filings are not relevant to the instant temporary waiver, the pendency of these two distinct proceedings provide the basis upon which Aliant seeks a temporary waiver of the separate CMRS affiliate requirement.

Aliant Qualifies For a Waiver Under the Report and Order

In the Report and Order, the Commission indicated that incumbent local exchange carriers with fewer than two percent (2%) of the nation's subscriber lines may petition the Commission for

³Aliant Communications Co. Petition For Waiver of Section 32.27(c) of the Commission's Rules, AAD No. 96-131, Order, rel. Dec. 24, 1997 ("Order").

⁴Joint Comments of the Bell Company Coalition in Support of Petition for Reconsideration, AAD No. 96-131, filed Feb. 5, 1998.

suspension or modification of the separate CMRS affiliate requirements.⁵ Aliant meets that threshold requirement. LECs meeting that threshold are allowed to seek a waiver of the separate CMRS affiliate requirement if they demonstrate that compliance with that requirement would be unduly economically burdensome.⁶ Compliance with the separate CMRS affiliate requirement at this time is unduly economically burdensome to Aliant because of uncertainty surrounding the valuation, and underlying structure, of the transaction to transfer Aliant's CMRS holdings to its CMRS affiliate.

As set forth in Aliant's Accounting Waiver and supplements thereto, Aliant has obtained a letter ruling from the Internal Revenue Service ("IRS") allowing for the transfer of assets at book value, under the terms of a transfer consistent with the transaction as described in its pro forma assignment applications.⁷ Specifically, the book value transaction would be accomplished by the transfer of the Aliant CMRS assets to a separate subsidiary and an ensuing spin-off of that subsidiary to Aliant Cellular Inc., Aliant's dedicated CMRS affiliate. The transfer of the assets at fair market value, however, would require a transaction structure radically different from that described above. In order to minimize the immediacy of the adverse tax consequences associated with a transfer of the CMRS assets at fair market value, Aliant would sell the CMRS assets directly to Aliant Cellular, Inc., thereby allowing its CMRS affiliate to have its full basis in those assets.

⁵See Report and Order ¶¶ 69-77.

⁶Report and Order ¶ 71.

⁷Fourth Supplement to Petition for Waiver, Aliant Communications Co., AAD 96-131, filed Oct. 27, 1997, attachments.

Aliant investigated whether it would be possible to proceed with the transfer at fair market value at this time in order to satisfy the FCC's separate CMRS affiliate requirement, while also retaining the ability to revisit the transaction should, through resolution of either of the two pending reconsideration proceedings, Aliant be granted the authority at a later date to record the transaction at book value. Aliant's accountants have advised that it would not be feasible to "undo" the consummation of the transaction at fair market value in order to consummate the transaction subsequently at book value. Because of the AAD Order, Aliant lacks the requisite FCC authority to proceed with the spin-off transaction approved by the IRS and record the transaction at book value. Moreover, even if such a book value transfer could be completed at this time, the subsequent reversal of that transaction in order to adopt the appropriate structure for a fair market value transfer would have substantial and immediate adverse tax consequences.

As described in the Accounting Waiver proceeding, if Aliant is forced to record the proposed transaction at fair market value, it will incur substantial tax liabilities. Resolution of either one of the two pending reconsideration proceedings, however, may provide Aliant with the authority to proceed with the proposed transaction at book value. Accordingly, the only option available to Aliant to avoid the adverse consequences of (i) proceeding with either transaction with the uncertainty of needing to reverse that transaction at a later time; or (ii) proceeding strictly with a fair market value transaction, would be to postpone the consummation of the transfer to the separate CMRS affiliate until after such time as the two pending reconsideration proceedings become final.

Grant of the Instant Temporary Waiver Would Not Frustrate the Purpose
of the Commission's Rules

Aliant's current ownership structure has been in place for more than a decade and no CMRS carrier has ever alleged that Aliant ever used its market position as the incumbent LEC in an inappropriate or anti-competitive manner. Indeed the Report and Order expressly states that the separate affiliate requirement is being instituted as a preventive measure to avoid future anti-competitive conduct.⁸ Aliant respectfully submits that the grant of the temporary waiver sought herein would neither frustrate the Commission's long-term goals nor act to insulate Aliant from any alleged wrongdoing should a complaint arise during the interim regarding Aliant's competitive practices. Further, grant of the instant waiver would be consistent with the terms of the Report and Order which allow incumbent LECs to seek a waiver of the separate CMRS affiliate requirement if compliance is unduly economically burdensome.

Conclusion

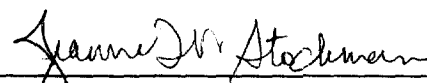
For the reasons stated above, Aliant respectfully submits that a grant of this temporary waiver until such time as the reconsideration proceedings regarding the Report and Order and Aliant's Accounting Waiver become final, would clearly be in the public interest, consistent with the

⁸See Report and Order ¶ 69.

Commission's stated policy of granting waivers from LECs such as Aliant, and would not in any way serve to frustrate the purpose of the new rules adopted in the Report and Order.

Respectfully submitted,

ALIAN T COMMUNICATION CO.

By 
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Its Attorneys

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